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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,628	07/02/2003	Varadarajan Srinivasan	NLM1.P211	4351
25670 7590 08/30/2007 WILLIAM L. PARADICE, III 4880 STEVENS CREEK BOULEVARD SUITE 201 SAN JOSE, CA 95129			EXAMINER WU, JIANYE	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 08/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/613,628

Applicant(s)

SRINIVASAN ET AL.

Examiner

Jianye Wu

Art Unit

2616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-24.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attache "Response to Arguments".  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments filed 8/7/07 have been fully considered but they are not persuasive.

2. For remarks on independent claim 1 (pages 8-10), Applicant argues that "Blake fails to disclose or suggest a traffic management processor including 'an instruction decode'" because the following reasons:

a) failure to disclose to the instruction;

b) failure to disclose to the encoder.

In response, Examiner respectfully disagrees. The following are Examiner's responses to applicant's arguments:

a) An instruction is interpreted by Examiner as a code that causes certain actions of a system. Blake's codepoint in each packet is considered as an instruction with this interpretation because it causes certain actions on the packet by the traffic management processor according to the value of codepoint. The codepoint (as an instruction) is input into the system via the packet.

b) Blake's classifier is interpreted as an encoder because it reads instruction (codepoint of every packet) and determines (decodes) its value and then informs (sends signal) other one or more of other components of the traffic management processor for different actions (including throttling).

3. For remarks on independent claim 15 (pages 10-11), Applicant uses the same reasoning as that of claim 1 (b).

In response, the explanation presented above for claim 1 (b) is applied.

Art Unit: 2616

4. For remarks on independent claim 9 (page 11-13), Applicant argues that Heinanen fails to disclose or suggest the method of Claim 9 due to the following reasons:

a) Heinanen's "color of packet" is not equivalent to BMF of the application;

b) Heinanen does not disclose throttle instructions;

In response, Examiner respectfully disagrees. The following are Examiner's responses to applicant's remarks:

a) BMF is defined as "a factor by which the bandwidth parameter is adjusted in calculating the departure time for a packet" by Applicant. Heinanen discloses that the packet color is a factor describing the traffic type that the packet belongs to and hence deciding what set of rules to be used in determining the departure time of the packet. By definition the color of packet matches well with BMF and is considered to be equivalent to BMF.

b) The Shaper (Fig. 1) that processes the output of marker (and part output from meter directly fed into the shaper of the traffic management processor shown in Figure 1 of RFC 2475, as suggested in line 2 of Abstract of Heinanen) includes traffic control instructions that include throttling instructions to be applied to packets with different colors;

5. For remarks on independent claim 6 (pages 13-14), Applicant uses the same reasoning as that of claim 9.

In response, the explanation presented above for claim 9 is applied.

Art Unit: 2616

6. Because the rejections to all independent claims stand, therefore, rejections to all the dependent claims remain the same.

Jianye Wu  
8/23/07

JY

Seema S. Rao

8/28/07

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